



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
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November 15, 2024

BY ECF

Hon. Denise L. Cote
United States District Court
Southern District of New York
500 Pearl Street, Room 1610
New York, New York 10007

**Re: *New York Times & Khan v. U.S. Department of Defense,*
22 Civ. 9481 (DLC)**

Dear Judge Cote:

I write respectfully on behalf of Defendant the United States Department of Defense (“DoD”) in this action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to update the Court on the status of DoD’s processing of the respective FOIA requests in this matter.

This case concerns four FOIA requests submitted by Azmat Khan (“Khan”), a reporter with The New York Times (collectively, “Plaintiffs”), seeking records from three DoD components relating to reported civilian casualties from military operations. Khan submitted one FOIA request to the United States Africa Command (“AFRICOM”), two requests to the United States Central Command (“CENTCOM”), and one request to the United States Army (“Army”).

1. The AFRICOM Request

The FOIA request to AFRICOM seeks records concerning 37 alleged incidents of civilian casualties. As previously reported to the Court, AFRICOM identified 174 potentially responsive records, comprising approximately 1200 pages. In addition to review within AFRICOM, many of those records required consultation with other agencies and/or DoD components, including multiple sub-components of the United States Special Operations Command (“SOCOM”). On November 15, 2024, DoD made a further production of non-exempt portions of approximately 172 pages. AFRICOM is still awaiting responses to two outstanding consultation requests. AFRICOM is also working to resolve a technical issue relating to the processing of these remaining records, which are maintained in a different classified records system than the records previously processed by AFRICOM. Upon receipt of the remaining consultation responses and resolution of the technical issue, AFRICOM expects to make a final production of the remaining non-exempt responsive records.

2. The Baghuz Requests to Army and CENTCOM

Two of the FOIA requests at issue in this case—the request submitted to Army and one of the two requests submitted to CENTCOM—concern a civilian casualty incident in Baghuz, Syria on March 18, 2019. The Secretary of Defense tasked U.S. Army General Michael X. Garrett, then-commander of U.S. Army Forces Command, to conduct an independent review of the incident, which was completed in late 2021. The FOIA request to Army seeks General Garrett’s report and the evidentiary materials he considered. Those records were gathered by the Army and have been referred to CENTCOM for processing.¹ CENTCOM has produced General Garrett’s report, with redactions of information determined to be exempt from disclosure under one or more FOIA exemptions. CENTCOM continues to process the evidentiary materials for CENTCOM equities at a rate of 150 pages every 60 days.² CENTCOM completed internal processing of 225 pages at the end of October, and its internal processing of the next set of records is due to be completed by the end of December. In addition, on November 13, CENTCOM made a production of non-exempt portions of three sets of records that previously had been referred to other DoD components for consultation.

3. The CENTCOM Payments Request

The second FOIA request to CENTCOM sought records concerning certain condolence or *ex gratia* payments referred to in a DoD report or congressional correspondence, as well as records concerning the underlying incidents that led to the payments. CENTCOM located three responsive records and produced the non-exempt portions of those records on October 31, 2023. CENTCOM has completed its response to this FOIA request.

We thank the Court for its consideration of this letter. DoD respectfully proposes to submit a further status report within 60 days, or by January 14, 2025.

Respectfully,

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¹ The parties have agreed that CENTCOM will hold the separate CENTCOM request regarding the Baghuz incident in abeyance pending its processing of the records responsive to the Army request.

² This does not include any consultations with other DoD components or agencies that may be required.